(10) The number of employees for whom the Administrator set the pay under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.

(Added Pub. L. 108–201, §3(a), Feb. 24, 2004, 118 Stat. 475.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in introductory provisions, is the date of enactment of Pub. L. 108–201, which was approved Feb. 24, 2004.

CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

§ 9901. Definitions

For purposes of this chapter—

(1) the term ''Director'' means the Director of the Office of Personnel Management; and

(2) the term ''Secretary'' means the Secretary of Defense.

(Added Pub. L. 108–136, div. A, title XI, §1101(a)(1), Nov. 24, 2003, 117 Stat. 1621.)

IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Pub. L. 108–136, div. A, title XI, §1101(b), Nov. 24, 2003, 117 Stat. 1633, provided that:

''(1) Any exercise of authority under chapter 99 of such title [this chapter] (as added by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

''(2) No other provision of this Act [see Tables for classification] or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section [enacting this chapter], except to the extent that it does so by specific reference to this section.''

§ 9902. Establishment of human resources management system

(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. The human resources management system established under authority of this section shall be referred to as the ''National Security Personnel System''.

(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

(1) be flexible;

(2) be contemporary;

(3) not waive, modify, or otherwise affect—

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

(I) providing for equal employment opportunity through affirmative action; or

(II) providing any right or remedy available to any employee or applicant for employment in the public service;

(D) any other provision of this part (as described in subsection (d)); or

(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;

(4) ensure that employees may organize, bargain collectively as provided for in this chapter, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of this chapter and any exclusion from coverage or limitation on negotiability established pursuant to law;

(5) not be limited by any specific law or authority under this title, or by any rule or regulation prescribed under this title, that is waived in regulations prescribed under this chapter, subject to paragraph (3); and

(6) include a performance management system that incorporates the following elements:

(A) Adherence to merit principles set forth in section 2301.

(B) A fair, credible, and transparent employee performance appraisal system.

(C) A link between the performance management system and the agency's strategic plan.

(D) A means for ensuring employee involvement in the design and implementation of the system.

(E) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system.

(F) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.

(G) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.

(H) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.

(I) A pay-for-performance evaluation system to better link individual pay to performance, and provide an equitable method for appraising and compensating employees.

(c) PERSONNEL MANAGEMENT AT DEFENSE LABORATORIES.—(1) The National Security Personnel System shall not apply with respect to a laboratory under paragraph (2) before October 1, 2008, and shall apply on or after October 1, 2008, only to the extent that the Secretary determines that the flexibilities provided by the National Security Personnel System are greater than the flexibilities provided to those laboratories pursuant to section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) and section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note), respectively.

(2) The laboratories to which this subsection applies are—

(A) the Aviation and Missile Research Development and Engineering Center;

(B) the Army Research Laboratory;

(C) the Medical Research and Materiel Command;

(D) the Engineer Research and Development Command;

(E) the Communications-Electronics Command;

(F) the Soldier and Biological Chemical Command;

(G) the Naval Sea Systems Command Centers;

(H) the Naval Research Laboratory;

(I) the Office of Naval Research; and

(J) the Air Force Research Laboratory.

(d) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part referred to in subsection (b)(3)(D) are (to the extent not otherwise specified in this title)—

(1) subparts A, B, E, G, and H of this part; and

(2) chapters 41, 45, 47, 55 (except subchapter V thereof, apart from section 5545b), 57, 59, 71, 72, 73, and 79, and this chapter.

(e) LIMITATIONS RELATING TO PAY.—(1) Nothing in this section shall constitute authority to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53.

(2) Except as provided for in paragraph (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or other similar cash payments paid under this title to any employee who is paid under section 5376 or 5383 or under title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees may not exceed the total annual compensation payable to the Vice President under section 104 of title 3.

(3) To the maximum extent practicable, the rates of compensation for civilian employees at the Department of Defense shall be adjusted at the same rate, and in the same proportion, as are rates of compensation for members of the uniformed services.

(4) To the maximum extent practicable, for fiscal years 2004 through 2008, the overall amount allocated for compensation of the civilian employees of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System shall not be less than the amount that would have been allocated for compensation of such employees for such fiscal year if they had not been converted to the National Security Personnel System, based on, at a minimum—

(A) the number and mix of employees in such organizational or functional unit prior to the conversion of such employees to the National Security Personnel System; and

(B) adjusted for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

(5) To the maximum extent practicable, the regulations implementing the National Security Personnel System shall provide a formula for calculating the overall amount to be allocated for fiscal years after fiscal year 2008 for compensation of the civilian employees of an organization or functional unit of the Department of Defense that is included in the National Security Personnel System. The formula shall ensure that in the aggregate, employees are not disadvantaged in terms of the overall amount of pay available as a result of conversion to the National Security Personnel System, while providing flexibility to accommodate changes in the function of the organization, changes in the mix of employees performing those functions, and other changed circumstances that might impact pay levels.

(f) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—(1) In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of, employee representatives in the planning, development, and implementation of the National Security Personnel System, the Secretary and the Director shall provide for the following:

(A) The Secretary and the Director shall, with respect to any proposed system—

(i) provide to the employee representatives representing any employees who might be affected a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

(ii) give such representatives at least 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

(iii) give any recommendations received from such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

(B) Following receipt of recommendations, if any, from such employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

(i) notify Congress of those parts of the proposal, together with the recommendations of the employee representatives;

(ii) meet and confer for not less than 30 calendar days with the employee representatives, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

(iii) at the Secretary's option, or if requested by a majority of the employee representatives participating, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

(C)(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which the recommendations are accepted by the Secretary and the Director, may be implemented immediately.

(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary, in his discretion, determines that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts (including any modifications made in response to the recommendations as the Secretary determines advisable), but only after 30 days have elapsed after notifying Congress of the decision to implement the part or parts involved (as so modified, if applicable).

(iii) The Secretary shall notify Congress promptly of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from the employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

(D) If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

(i) develop a method for the employee representatives to participate in any further planning or development which might become necessary; and

(ii) give the employee representatives adequate access to information to make that participation productive.

(2) The Secretary may, at the Secretary's discretion, engage in any and all collaboration activities described in this subsection at an organizational level above the level of exclusive recognition.

(3) In the case of any employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary and the Director may develop procedures for representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of this subsection.

(4) The procedures under this subsection are the exclusive procedures for the participation of employee representatives in the planning, development, implementation, or adjustment of the National Security Personnel System.

(g) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—(1) The National Security Personnel System implemented or modified under this chapter may include employees of the Department of Defense from any bargaining unit with respect to which a labor organization has been accorded exclusive recognition under chapter 71.

(2) For any bargaining unit so included under paragraph (1), the Secretary may bargain with a labor organization at an organizational level above the level of exclusive recognition. The decision to bargain at a level above the level of exclusive recognition shall not be subject to review or to statutory third-party dispute resolution procedures outside the Department of Defense. Any such bargaining shall—

(A) be binding on all subordinate bargaining units of the labor organization at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;

(B) supersede all other collective bargaining agreements of the labor organization, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition, except as otherwise determined by the Secretary;

(C) not be subject to further negotiations with the labor organizations for any purpose, including bargaining at the level of recognition, except as provided for by the Secretary; and

(D) be subject to review by an independent third party only to the extent provided and pursuant to procedures established under paragraph (6) of subsection (m).

(3) The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this subsection.

(4) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.

(h) PROVISIONS RELATING TO APPELLATE PROCEDURES.—(1) The Secretary—

(A) may establish an appeals process that provides employees of the Department of Defense organizational and functional units that are included in the National Security Personnel System fair treatment in any appeals that they bring in decisions relating to their employment; and

(B) shall in prescribing regulations for any such appeals process—

(i) ensure that employees in the National Security Personnel System are afforded the protections of due process; and

(ii) toward that end, be required to consult with the Merit Systems Protection Board before issuing any such regulations.

(2) Regulations implementing the appeals process may establish legal standards and procedures for personnel actions, including standards for applicable relief, to be taken on the basis of employee misconduct or performance that fails to meet expectations. Such standards shall be consistent with the public employment principles of merit and fitness set forth in section 2301.

(3) Legal standards and precedents applied before the effective date of this section by the Merit Systems Protection Board and the courts under chapters 43, 75, and 77 of this title shall apply to employees of organizational and functional units included in the National Security Personnel System, unless such standards and precedents are inconsistent with legal standards established under this subsection.

(4) An employee who—

(A) is removed, suspended for more than 14 days, furloughed for 30 days or less, reduced in pay, or reduced in pay band (or comparable reduction) by a final decision under the appeals process established under paragraph (1);

(B) is not serving under probationary period as defined under regulations established under paragraph (2); and

(C) would otherwise be eligible to appeal a performance-based or adverse action under chapter 43 or 75, as applicable, to the Merit Systems Protection Board,

shall have the right to petition the full Merit Systems Protection Board for review of the record of that decision pursuant to regulations established under paragraph (2). The Board may dismiss any petition that, in the view of the Board, does not raise substantial questions of fact or law. No personnel action shall be stayed and no interim relief shall be granted during the pendency of the Board's review unless specifically ordered by the Board.

(5) The Board may order such corrective action as the Board considers appropriate only if the Board determines that the decision was—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

(6) An employee who is adversely affected by a final order or decision of the Board may obtain judicial review of the order or decision as provided in section 7703. The Secretary of Defense, after notifying the Director, may obtain judicial review of any final order or decision of the Board under the same terms and conditions as provided an employee.

(7) Nothing in this subsection shall be construed to authorize the waiver of any provision of law, including an appeals provision providing a right or remedy under section 2302(b) (1), (8) or (9), that is not otherwise waivable under subsection (a).

(8) The right of an employee to petition the Merit Systems Protection Board of the Department's final decision on an action covered by paragraph (4) of this subsection, and the right of the Merit Systems Protection Board to review such action or to order corrective action pursuant to paragraph (5), is provisional for 7 years after the date of the enactment of this chapter, and shall become permanent unless Congress acts to revise such provisions.

(i) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) shall not be included in that number.

(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

(3) For purposes of this section, the term ''employee'' means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

(5)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c), if the employee were entitled to payment under such section; or

(ii) $25,000.

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–236;[1] 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

(j) PROVISIONS RELATING TO REEMPLOYMENT.—If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.

(k) ADDITIONAL PROVISIONS RELATING TO PERSONNEL MANAGEMENT.—(1) Notwithstanding subsection (d), the Secretary of Defense, in establishing and implementing the National Security Personnel System under subsection (a), shall not be limited by any provision of this title or any rule or regulation prescribed under this title in establishing and implementing regulations relating to—

(A) the methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(B) the methods of assigning, reassigning, detailing, transferring, or promoting employees; and

(C) the methods of reducing overall agency staff and grade levels, except that performance, veterans' preference, tenure of employment, length of service, and such other factors as the Secretary considers necessary and appropriate shall be considered in decisions to realign or reorganize the Department's workforce.

(2) In implementing this subsection, the Secretary shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, as provided for in subsection (b)(3).

(*l*) PHASE-IN.—The Secretary may apply the National Security Personnel System—

(1) to an organizational or functional unit that includes up to 300,000 civilian employees of the Department of Defense, without having to make a determination described in paragraph (2); and

(2) to an organizational or functional unit that includes more than 300,000 civilian employees of the Department of Defense, if the Secretary determines in accordance with subsection (a) that the Department has in place a performance management system that meets the criteria specified in subsection (b).

(m) LABOR MANAGEMENT RELATIONS IN THE DEPARTMENT OF DEFENSE.—(1) Notwithstanding section 9902(d)(2), the Secretary, together with the Director, may establish and from time to time adjust a labor relations system for the Department of Defense to address the unique role that the Department's civilian workforce plays in supporting the Department's national security mission.

(2) The system developed or adjusted under paragraph (1) would allow for a collaborative issue-based approach to labor management relations.

(3) In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of, employee representatives in the development and implementation of the labor management relations system or adjustments to such system under this section, the Secretary shall provide for the following:

(A) The Secretary and the Director shall, with respect to any proposed system or adjustment—

[1] So in original. Probably should be Public Law ''103–226;''.

(i) afford employee representatives and management the opportunity to have meaningful discussions concerning the development of the new system;

(ii) give such representatives at least 30 calendar days (unless extraordinary circumstances require earlier action) to review the proposal for the system and make recommendations with respect to it; and

(iii) give any recommendations received from such representatives under clause (ii) full and fair consideration.

(B) Following receipt of recommendations, if any, from such employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as are determined advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

(i) meet and confer for not less than 30 calendar days with the employee representatives, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

(ii) at the Secretary's option, or if requested by a majority of the employee representatives participating, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

(C)(i) Any part of the proposal described in subparagraph (A) as to which employee representatives do not make a recommendation, or as to which the recommendations are accepted under subparagraph (B), may be implemented immediately.

(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted, at any time after 30 calendar days have elapsed since the consultation and mediation procedures set forth in subparagraph (B), if the Secretary, in his discretion, determines that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts (including any modifications made in response to the recommendations as the Secretary determines advisable), but only after 30 days have elapsed after notifying Congress of the decision to implement the part or parts involved (as so modified, if applicable).

(D) The process for collaborating with employee representatives provided for under this subsection shall begin no later than 60 calendar days after the date of enactment of this subsection.

(4) The Secretary may engage in any and all collaboration activities described in this subsection at an organizational level above the level of exclusive recognition.

(5) The system developed or adjusted under this subsection may incorporate the authority to bargain at a level above the level of exclusion recognition provided for in subsection (g) of this section, but may not abrogate or modify the authority provided for in that subsection. Notwithstanding this subsection, the Secretary may, at his discretion, implement the authority in subsection (g) immediately upon enactment of this subsection.

(6) The labor relations system developed or adjusted under this subsection shall provide for independent third party review of decisions, including defining what decisions are reviewable by the third party, what third party would conduct the review, and the standard or standards for that review.

(7) Nothing in this section, including the authority provided to waive, modify, or otherwise affect provisions of law not listed in subsections (b) and (c) as nonwaivable, shall be construed to expand the scope of bargaining under chapter 71 or this subsection with respect to any provision of this title that may be waived, modified, or otherwise affected under this section.

(8) The labor relations system developed or adjusted under this subsection shall be binding on all bargaining units within the Department of Defense, all employee representatives of such units, and the Department of Defense and its subcomponents, and shall supersede all other collective bargaining agreements for bargaining units in the Department of Defense, including collective bargaining agreements negotiated with employee representatives at the level of recognition, except as otherwise determined by the Secretary.

(9) Unless it is extended or otherwise provided for in law, the authority to establish, implement and adjust the labor relations system developed under this subsection shall expire six years after the date of enactment of this subsection, at which time the provisions of chapter 71 will apply.

(Added Pub. L. 108–136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1621.)

REFERENCES IN TEXT

Section 342 of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c)(1), is Pub. L. 103–337, title III, § 342, Oct. 5, 1994, 108 Stat. 2721, which is not classified to the Code.

Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (c)(1), is section 1101 of Pub. L. 105–261, which is set out as a note under section 3104 of this title.

The effective date of this section, referred to in subsec. (h)(3), is the date of enactment of Pub. L. 108–136, which enacted this section and was approved Nov. 24, 2003.

The date of the enactment of this chapter, referred to in subsec. (h)(8), is the date of enactment of Pub. L. 108–136, which was approved Nov. 24, 2003.

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (i)(2)(A), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

The date of the enactment of the Federal Workforce Restructuring Act of 1994, referred to in subsec. (i)(6)(B), is the date of enactment of Pub. L. 103–226, which was approved Mar. 30, 1994.

The date of the enactment of this subsection and enactment of this subsection, referred to in subsec. (m)(3)(D), (5), (9), probably mean the date of enactment of Pub. L. 108–136, which was approved Nov. 24, 2003.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Gov-

ernmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

CIVILIAN PAY

Pub. L. 109–13, div. A, title I, §1020, May 11, 2005, 119 Stat. 251, provided that: ''None of the funds appropriated to the Department of Defense by this Act or any other Act for fiscal year 2005 or any other fiscal year may be expended for any pay raise granted on or after January 1, 2005, that is implemented in a manner that provides a greater increase for non-career employees than for career employees on the basis of their status as career or non-career employees, unless specifically authorized by law: *Provided*, That this provision shall be implemented for fiscal year 2005 without regard to the requirements of section 5383 of title 5, United States Code: *Provided further*, That no employee of the Department of Defense shall have his or her pay reduced for the purpose of complying with the requirements of this provision.''

PILOT PROGRAM FOR IMPROVED CIVILIAN PERSONNEL MANAGEMENT

Pub. L. 108–136, div. A, title XI, §1111, Nov. 24, 2003, 117 Stat. 1634, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense may carry out a pilot program using an automated workforce management system to demonstrate improved efficiency in the performance of civilian personnel management. The automated workforce management system used for the pilot program shall be capable of automating the following workforce management functions:

''(1) Job definition.

''(2) Position management.

''(3) Recruitment.

''(4) Staffing.

''(5) Performance management.

''(b) AUTHORITIES UNDER PILOT PROGRAM.—Under the pilot program, the Secretary of Defense shall provide the Secretary of each military department with the authority for the following:

''(1) To use an automated workforce management system for the civilian workforce of that military department to assess the potential of such a system to do the following:

''(A) Substantially reduce hiring cycle times.

''(B) Lower labor costs.

''(C) Increase efficiency.

''(D) Improve performance management.

''(E) Provide better management reporting.

''(F) Enable that system to make operational new personnel management flexibilities granted under the civilian personnel transformation program.

''(2) Identify at least one regional civilian personnel center (or equivalent) in that military department for participation in the pilot program.

''(c) DURATION OF PILOT PROGRAM.—The Secretary of Defense may carry out the pilot program under this section at each selected regional civilian personnel center for a period of two years beginning not later than March 1, 2004.''

§ 9903. Attracting highly qualified experts

(a) IN GENERAL.—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

(b) AUTHORITY.—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376, as increased by locality-based comparability payments under section 5304, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense's national security missions.

(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:

(A) $50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

For purposes of this paragraph, the term ''base quarter'' has the meaning given such term by section 5302(3).

(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.

(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(e) LIMITATION ON NUMBER OF HIGHLY QUALIFIED EXPERTS.—The number of highly qualified experts appointed and retained by the Secretary under subsection (b)(1) shall not exceed 2,500 at any time.

(f) SAVINGS PROVISIONS.—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—